

MINUTES OF THE SENATE NATURAL RESOURCES COMMITTEE.

The meeting was called to order by Chairperson Robert Tyson at 8:30 a.m. on January 11, 2001 in Room 423-S of the Capitol.

All members were present except: Senator Christine Downey - excused

Committee staff present: Raney Gilliland, Legislative Research Department
Jill Wolters, Office of Revisor of Statutes
Judy Krase, Committee Secretary

Conferees appearing before the committee:

Dr. Ron Hammerschmidt, Director, Division of Environment, KDHE
Karl Mueldener, Director, Bureau of Water, KDHE
Theresa Hodges, Director, Bureau of Environmental Field Services, KDHE

Others attending: See attached list

The meeting was called to order by Chairperson Robert Tyson.

The first conferee to appear before the committee was Dr. Ron Hammerschmidt (Director, Division of Environment) who started with opening remarks and provided a background for the information that would be provided by staff of the Department. He introduced Karl Mueldener (Director, Bureau of Water), Theresa Hodges (Director, Bureau of Environmental Field Services) and Tom Stiles (Director, Policy and Planning). He noted that Jan Sides (Director, Bureau of Air and Radiation) planned to be present tomorrow to talk about air quality and fuel issues in Kansas City.

Karl Mueldener briefed the committee on water quality standards, what they are and what they mean. He commented they are state regulations, which were proposed and adopted by KDHE (Attachment 1). Discussion and questions followed his presentation.

Senator Lee commented on the latest U.S. Supreme Court ruling dealing with the extent of regulations by EPA dealing with certain water bodies.

Theresa Hodges briefed the committee on Use Attainability Analysis Protocols (Attachment 2). Discussion and questions followed.

Senator Lee requested a conceptual bill to be introduced concerning classifying streams and adopting various new definitions, seconded by Senator Umbarger. Motion carried.

The meeting adjourned at 9:25 a.m.

The next meeting is scheduled for January 12 at 8:30 a.m.

**SENATE NATURAL RESOURCES COMMITTEE
GUEST LIST**

DATE: JANUARY 11, 2001

NAME	REPRESENTING
Chris Dove	Charles Benjamin / Sierra Club
Mike Jensen	Ks Pork
Joe Fund	KDHE
Tom Hammerschmidt	KDHE
MIKE TATE	KDHE
Kim Gulleg	LKMA
Harl Muedener	KDHE
Theresa Hodges	KDHE
Tom Stiles	KDHE
Kerri Ebert	KS Dairy Association
Doug A. Dole	KDA
Mike Beahm	Ks. LVSTK. ASSN.
Margaret Fast	Ks Water Office
David Miller	DOB
Doug Wareham	KGFA / KFCA
Joe Lieber	KS Co-op Council
Tom Bruno	Allen & Assocs.
Doug Smith	Pinegar-Smith Company
Andy Shaw	Kearney Law Office
Jim Allen	Sea board
Julie Hein	Hein & Weber

Water Quality Standards

- States must develop water quality standards to protect human health and aquatic life
 - EPA must approve
 - If not, EPA will develop standards for a state
 - States review at least every 3 yrs
- Required components
 - Designate Uses
 - Develop Water Quality Criteria
 - Develop Anti-degradation Policy

KDHE

Designated Uses

- Designated Use - how we want to use the water
 - May or may not currently be attaining the use
 - Uses in Kansas
 - Aquatic life support*
 - Recreation*
 - Public health
 - Drinking water
 - Food procurement
 - Agricultural use
 - Livestock
 - Irrigation

* Required by EPA

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Types of Criteria

- Numeric
 - pH
 - Arsenic
 - Ammonia
 - etc
- Narrative
 - Free from
 - oil
 - foam
 - etc

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Criteria Development

- Public Health
 - Based on ingesting water, fish and seafood
- Aquatic Life
 - Acute - toxic in a short period of time (≤ 1 day)
 - Chronic - toxic over a longer time period
 - Based on experimental and lab generated data
- Recreation
 - Primary - high probability of ingestion
 - Secondary - lower probability for ingestion

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Standards Impact

- Discharge permits
- 303d Impaired waters list
 - TMDLs
- 305b Report

KDHE

EPA Issues

- Proposed EPA promulgation
 - EPA required to promulgate on disapproved items
 - Sierra Club filed law suit because EPA not timely
 - Hearings held on proposed promulgation language
 - EPA will decide whether to promulgate proposed language, or modify the proposed promulgation
- 2000 Water Quality Standards Update
 - Definition of "background"
 - Ammonia (NH₃) criteria
 - Triennial Review

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EPA Promulgation

- EPA has determined Kansas is "not consistent" with the Clean Water Act on the following issues
 - Endosulfan criteria
 - Anti-degradation policy
 - Default secondary contact recreation designation
 - Effluent created habitat
 - Private waters (farm ponds)
 - Default low flow
- Except for endosulfan, will not find these issues directly addressed in a law or regulation
 - EPA is *interpreting* law and regulation

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EPA Promulgation

- Endosulfan (pesticide) criteria
 - Criteria already adopted by KDHE
- Anti-degradation policy
 - Minor wording change can resolve
- Default secondary contact recreation designation
 - May require UAAs on ~1200 stream segments
- Effluent created habitat
 - Only used in 7 wastewater facility permits

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EPA Promulgation

- Private waters - "farm ponds"
 - EPA classifies as waters of the US, therefore water quality standards apply
- Default low flow
 - KDHE assumes a minimum of 1 cfs of flow exists in a stream when developing permit limits
 - EPA said an assumed flow is not acceptable
 - EPA now says we can possibly "rephrase" and still use the 1 cfs minimum flow

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Impact on Lagoons

- Approximately 800 lagoons in Kansas
 - Discharging - 360
 - On default low flow streams - 270
 - Non-Discharging - 440
- Without default flow, few would meet permit limits
 - BOD and ammonia (NH₃) problems
 - Fecal coliform not typically a problem.

KDHE

Lagoon Performance

- | | |
|--|--|
| ■ Current performance* | ■ Proposed EPA limits |
| ■ Effluent BOD <ul style="list-style-type: none">■ <18 mg/L all yr | ■ Effluent BOD <ul style="list-style-type: none">■ <17 mg/L all yr |
| ■ Effluent NH ₃ <ul style="list-style-type: none">■ Winter-1.3 mg/L■ Summer-1.0 mg/L | ■ Effluent NH ₃ <ul style="list-style-type: none">■ Winter-1.4 mg/L■ Summer-0.5 mg/L |
| ■ Effluent fecal coliform <ul style="list-style-type: none">■ <200 mg/L all yr | ■ Effluent fecal coliform <ul style="list-style-type: none">■ Summer <200/mL■ Winter <2000/mL |

*Based on 2-year KDHE study

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What's the Cost?

- EPA estimated \$2 million
- KDHE estimates \$100 to \$200 million
 - Don't believe the benefits justify the cost

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Summary of EPA Promulgation on 1994 Water Quality Standards

EPA will propose replacement water quality standards for Kansas in the summer of 2000. A consent decree between the Natural Resources Council, Sierra Club and EPA was signed on May 15, 2000, in which EPA agrees to propose the replacement standards for Kansas. Some of the items disapproved in the 1994 standards were resolved to EPA's satisfaction in the 1999 water quality standards. Items revised will not be included in the promulgation action. However, 6 items remain unresolved and will be included in this summer's proposal.

1. **Effluent created flows.** KDHE revised the language in the 1999 standards to reflect that a use attainability analysis (UAA) would be conducted prior to designating a stream as "effluent created." Once the UAA was completed, the designation would be applied for the purpose of issuing an NPDES discharge permit. EPA objected to this language and contends the effluent created designation must be adopted into the standards and approved by EPA before it can be implemented into a permit.
2. **Domestic water supply criteria for alpha and beta endosulfan.** The 1994 standards did not include criteria for these two pollutants. The 1999 standards made reference to the criteria promulgated at the federal level under the National Toxics Rule (NTR). Since these two parameters were not promulgated for Kansas under the NTR, the reference is incorrect and was disapproved again. EPA must now promulgate the criteria to satisfy the requirements for the NTR. KDHE proposed approvable criteria for these two parameters on June 15, 2000, in an update of the standards.
3. **Default low flows.** KDHE applies a default low flow of 1 cfs to NPDES permits when actual stream flow data is unavailable. EPA contends this allows for dilution where it does not exist and will propose language that allows only actual flows be used in permit derivations.
4. **Anti-degradation policy.** EPA has disapproved a portion of KDHE anti-degradation policy, contained within the surface water implementation procedures, because it does not address how nonpoint sources of pollution will be accounted for in an anti-degradation review for point sources. EPA will promulgate replacement anti-degradation language to address nonpoint sources.
5. **Surface water register - primary contact recreation.** 1,400 surface water segments contained in the register have been disapproved for the secondary contact recreation designated use. Surface waters without a formal UAA conducted upon them, by default receive the secondary contact recreation use designation. In Kansas, the 1,400 segments disapproved fall into this category. EPA contends the default designation must be for primary, not secondary, contact recreation and only through a UAA can the use be changed to secondary contact.
6. **Private surface waters.** Kansas statute excludes application of water quality standards to surface waters that are surrounded by privately held property (e.g., farm ponds, watershed lakes, and other small impoundments or wetlands). EPA contends these are waters of the United States and water quality standards must apply. EPA will propose language to include those waters as classified surface waters.

The proposed promulgation language was published in the *Federal Register* in mid-June. A public hearing regarding the proposed language will be held by EPA in Topeka and Dodge City on September 13 and 14, respectively.



KANSAS
DEPARTMENT OF HEALTH & ENVIRONMENT
BILL GRAVES, GOVERNOR
Clyde D. Graeber, Secretary

DRAFT

USE ATTAINABILITY ANALYSIS (UAA) PROTOCOLS

I. Introduction

The Kansas surface water quality standards (K.A.R. 28-16-28b through 28-16-28f) establish water quality goals for all streams, lakes and wetlands occurring within the state or forming a portion of the border with an adjoining state. General narrative provisions in the standards extend a basic level of protection to all such waters, irrespective of size or ownership. "Classified" waterbodies comprise an important subset of the waters of the state, in that they are assigned specific beneficial uses under the standards and are subject to numeric water quality criteria and related regulatory provisions. The level of protection afforded by the standards may vary among classified waterbodies depending on their assigned uses and associated water quality criteria.

The beneficial uses of approximately 2,500 stream segments, lakes and wetlands are delineated in the Kansas Surface Water Register. This register also assigns unique identification numbers and geographical (latitude/longitude) descriptors to individual waterbodies based on U.S. EPA river reach files.

The protocols to develop use designations for surface waters in Kansas endeavors to provide scientifically defensible information on the existing and attainable uses of classified streams, lakes and wetlands. This information is intended for use in:

- (1) complying with federal and state requirements for designating the beneficial uses of surface water (40CFR 131.10; K.A.R.28-16-28d);
- (2) responding to changes in the capacity of surface waters to support the beneficial uses recognized under the Kansas standards;
- (3) identifying and applying appropriate water quality criteria and related regulatory provisions in the development of National Pollutant Discharge Elimination System (NPDES) permit limits, and total maximum daily loads (wasteload allocations & load allocations);
- (4) responding to possible future changes in the wording of the Kansas standards with respect to the beneficial uses of surface water; and
- (5) responding to requests by permitted facilities and other interested stakeholders to review designated uses of surface waters.

Separate protocols have been developed for determining aquatic life support uses, primary/secondary contact recreation use (including food procurement), and water supply uses. These protocols have been

developed for use by external clients of the Kansas Department of Health and Environment for the development and submission of UAAs to the KDHE for review.

II. Implementation Procedures*

UAAs should be submitted to the Director, Bureau of Environmental Field Services, Kansas Department of Health and Environment, Forbes Field, Building 283, Topeka, Kansas 66620 for review. An internal KDHE review committee will meet quarterly, or more frequently if needed, to review all UAAs for accuracy, completeness and adequacy of statement of findings. If the UAA meets the stated criteria, it will be forwarded to the Data Management Section as a proposed change to the Kansas Surface Water Register. A written response to the entity submitting the UAA will be prepared by the Bureau of Environmental Field Services.

The Surface Water Quality Commission recommended that the Basin Advisory Committees assist the KDHE in examining the designated uses of streams within their basins. The basin advisory committees were established in 1985 for the twelve major river basins to advise the Kansas Water Office and Kansas Water Authority on local water issues. As UAAs are completed and changes proposed, the proposed changes will be forwarded to the appropriate Basin Advisory Committee for discussion and review at their stated meetings.

The Kansas Surface Water Register is adopted by reference in K.A.R. 28-16-28d(c)(2). K.A.R. 28-16-28d will be updated annually by the Bureau of Environmental Field Services to amend the register to reflect the findings of UAAs. A flow chart depicting the internal KDHE process for development of regulations is attached. The policies and procedures for filing Kansas Administrative Regulations, as developed by the Department of Administration to implement K.S.A. 77-415 through 77-437, will be followed (flow chart attached). These procedures include public notice and a public hearing on proposed regulatory changes. All entities who have submitted a UAA will be notified directly of the public hearing related to adoption of the revised register. UAAs and subsequent revisions to the Kansas surface water quality standards are subject to approval by the Regional Administrator, U.S. EPA (40CFR131.20(c))

* Flow chart attached.

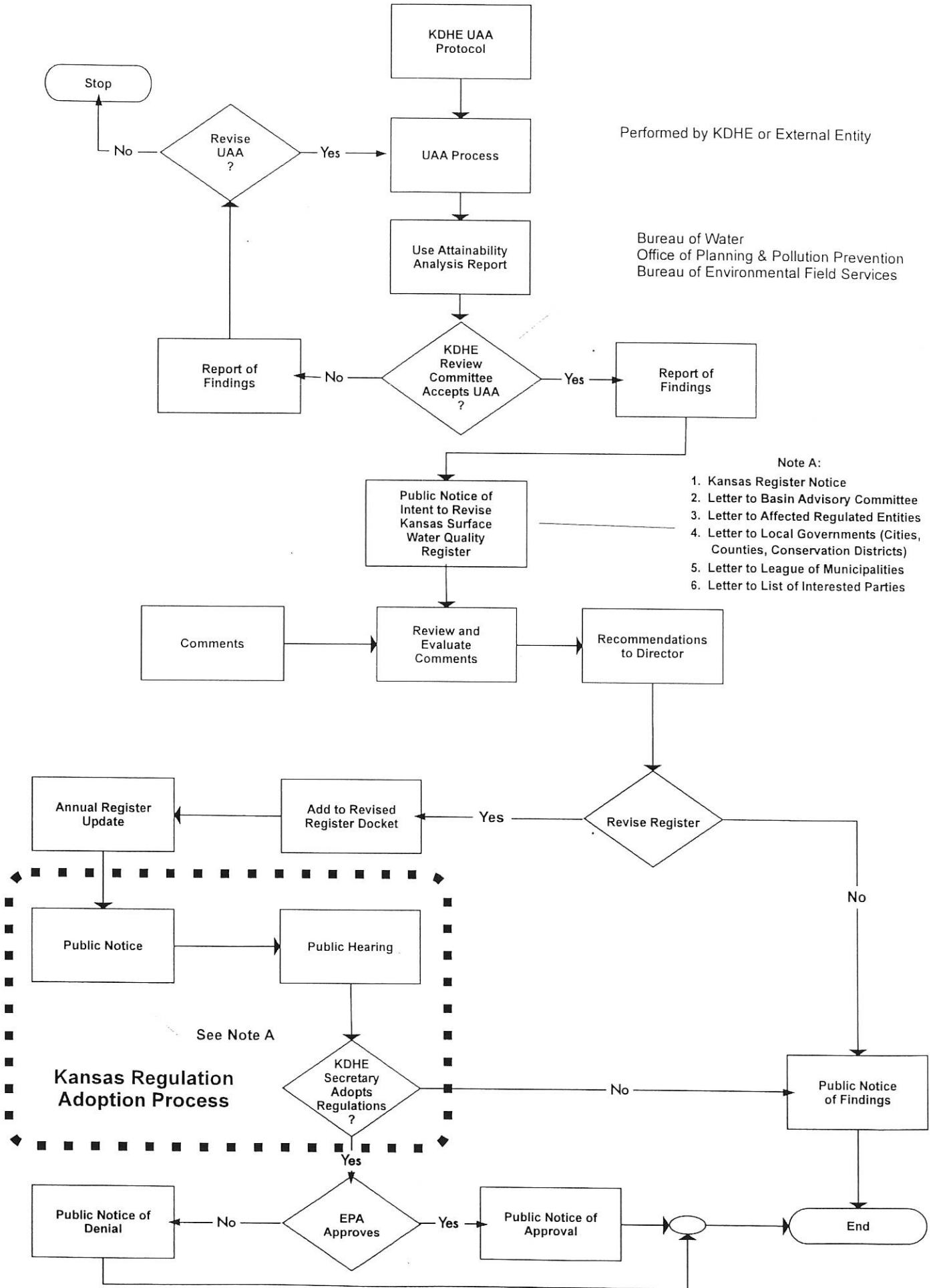
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Kansas Use Attainability Analysis Process



KANSAS REGULATION ADOPTION PROCESS

PERMANENT REGULATIONS

Total Time: 111 to 174 days
16 to 25 weeks

